

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND DEPARTMENT

Brown v. Cope Bestway Express, Inc.

99 A.D.3d 746, 952 N.Y.S.2d 220 (N.Y. App. Div. 2012) · Decided October 10, 2012

SUMMARY

The court addresses whether two personal-injury actions arising from the same automobile collision should be consolidated or jointly tried and where venue should be placed. It holds that a joint trial, rather than consolidation, is appropriate because the actions involve different plaintiffs, and directs that venue be placed in Nassau County due to one plaintiff's serious injuries and inability to attend trial in Monroe County.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Department
WRITING FOR THE COURT	Dillon, J.R.; Balkin, J.; Belen, J.; Austin, J.
JURISDICTION	New York
DECIDED	October 10, 2012
DISPOSITION	other
PROCEDURAL POSTURE	Samantha Eisenberg appealed from the portion of an order that consolidated two personal-injury actions and transferred the consolidated action from Monroe County to Nassau County.
STANDARD OF REVIEW	Abuse-of-discretion review of consolidation, joint-trial, and venue determinations under CPLR 602(a).
PRECEDENTIAL VALUE	published appellate decision
PARTIES	Samantha Eisenberg

TOPICS

- venue
- civil procedure
- appellate procedure
- personal injury

PRACTICE AREAS

- civil procedure
- personal injury
- appellate procedure

QUESTIONS PRESENTED

1. Whether the two actions arising from the same collision should be consolidated or tried jointly under CPLR 602(a).
2. Whether venue for the coordinated proceedings should be placed in Monroe County, where the first action was commenced, or Nassau County.
3. Whether a joint trial rather than consolidation was appropriate because the actions involved different plaintiffs.

HOLDINGS

1. Because the actions arose from the same incident and involved common questions of law and fact, coordinated proceedings were warranted in the interests of justice and judicial economy, absent prejudice to a substantial right.
2. Venue should be placed in Nassau County because Eisenberg's serious injuries made her unable to attend trial in Monroe County, constituting a special circumstance warranting departure from the usual rule favoring the county where the first action was commenced.
3. A joint trial, rather than consolidation, was the appropriate method because the two actions involved different plaintiffs, and the joint trial would not prejudice Brown's substantial rights.

KEY QUOTATIONS

"Where common questions of law or fact exist, a motion to consolidate or for a joint trial pursuant to CPLR 602 (a) should be granted absent a showing of prejudice to a substantial right by the party opposing the motion" (at 747-748)

FACTUAL BACKGROUND

Jessica Brown and Samantha Eisenberg allegedly sustained injuries when an automobile in which they were passengers collided with a truck in Rochester, New York, on February 12, 2010. Brown sued the truck's owner, lessee, and driver in Monroe County, while Eisenberg brought a related action in Nassau County against those parties and the Apaks, the owner and driver of the passenger vehicle. Eisenberg resided in Nassau County and suffered serious injuries that prevented her from attending a trial in Monroe County.

PROCEDURAL HISTORY

Brown commenced an action in Monroe County after a February 2010 automobile-truck collision. Eisenberg later commenced a related action in Nassau County, and Brown amended her complaint to add the Apaks as defendants. The Supreme Court consolidated the actions and transferred the consolidated action to Monroe County; Eisenberg appealed. The Appellate Division held that the matters should proceed by joint trial rather than consolidation and that venue should be in Nassau County.

DISPOSITION

other

REMAND INSTRUCTIONS

The proceedings are to be conducted by joint trial rather than consolidation, with venue placed in Nassau County. The opinion does not expressly state whether the matter was remanded in the source text.

CASES CITED

- Perini Corp. v. WDF, Inc., 33 A.D.3d 605, 606-607 (N.Y. App. Div. 2006)
- Alizio v. Perpignano, 78 A.D.3d 1087, 1088 (N.Y. App. Div. 2010)
- Mas-Edwards v. Ultimate Servs., Inc., 45 A.D.3d 540-541 (N.Y. App. Div. 2007)
- Nigro v. Pickett, 39 A.D.3d 720, 722 (N.Y. App. Div. 2007)
- Gomez v. Jersey Coast Egg Producers, 186 A.D.2d 629, 630 (N.Y. App. Div. 1992)
- Moor v. Moor, 39 A.D.3d 507, 508 (N.Y. App. Div. 2007)
- DeGregorio v. DeGregorio, 251 A.D.2d 366, 366-367 (N.Y. App. Div. 1998)
- Messina v. Upper Hudson Primary Care Consortium, Inc., 26 A.D.3d 698, 699 (N.Y. App. Div. 2006)
- T T Enters. v. Gralnick, 127 A.D.2d 651, 652 (N.Y. App. Div. 1987)
- Whiteman v. Parsons Transp. Group of N.Y., Inc., 72 A.D.3d 677, 678 (N.Y. App. Div. 2010)

OPINION

PER CURIAM.

*747On February 12, 2010, in Rochester, New York, Jessica Brown and Samantha Eisenberg allegedly were injured when an automobile in which they were passengers collided with a truck. In September 2010, Brown commenced an action in the Supreme Court, Monroe County (hereinafter action No. 1), against the owner, the lessee, and the driver of the truck.

In February 2011, Eisenberg commenced an action in the Supreme Court, Nassau County (hereinafter action No. 2), against, among others, those parties and Orcun Apak and Munur Apak (hereinafter together the Apaks), the owner and driver of the vehicle in which she and Brown had been passengers. Subsequently, Brown amended her complaint to add the Apaks as party defendants.

The Apaks moved to consolidate the two actions or for a joint trial, and to have venue placed in Nassau County. The Supreme Court granted the Apaks' motion to the extent of consolidating the two actions, and thereupon transferred the consolidated action to Monroe County. Eisenberg appeals from so much of the order as granted that branch of the Apaks' motion which was to consolidate the actions, and thereupon transferred the consolidated action to Monroe County. "Where common questions of law or fact exist, a motion to consolidate or for a joint trial pursuant to CPLR 602 (a) should be granted absent a showing of prejudice to a substantial right *748by the party opposing the motion" (Perini Corp. v WDF, Inc., 33 AD3d 605, 606 [2006]; see Alizio v Perpignano, 78 AD3d 1087, 1088 [2010]; Mas-Edwards v Ultimate Servs., Inc., 45 AD3d 540 [2007]).

When consolidation or joint trials are ordered under CPLR 602 (a), venue should generally be placed in the county where the first action was commenced (see *Nigro v Pickett*, 39 AD3d 720, 722 [2007]). Special circumstances, however, may warrant the court, in its discretion, to place venue elsewhere (see *Gomez v Jersey Coast Egg Producers*, 186 AD2d 629, 630 [1992]; cf. *Moor v Moor*, 39 AD3d 507, 508 [2007]; *DeGregorio v DeGregorio*, 251 AD2d 366, 366-367 [1998]).

It is undisputed that these two actions arose out of the same incident and involve common questions of law and fact. The Supreme Court properly found that the interests of justice and judicial economy warranted relief under CPLR 602 (a). Nevertheless, inasmuch as it was not controverted that Eisenberg, who resides in Nassau County, suffered serious injuries that make her unable to attend a trial in Monroe County, we conclude, in the exercise of our discretion, that venue should be placed in Nassau County (see *Messina v Upper Hudson Primary Care Consortium, Inc.*, 26 AD3d 698, 699 [2006]; *DeGregorio v DeGregorio*, 251 AD2d at 366-367).

Moreover, because the two actions involve different plaintiffs, a joint trial, rather than consolidation, is the appropriate method of achieving the goal of avoiding the unnecessary duplication of proceedings (see *Mas-Edwards v Ultimate Servs., Inc.*, 45 AD3d at 541; *Perini Corp. v WDF, Inc.*, 33 AD3d at 606-607; *T T Enters. v Gralnick*, 127 AD2d 651, 652 [1987]).

Finally, a joint trial of action No. 1 and action No. 2 will not prejudice any of Brown's substantial rights (see *Whiteman v Parsons Transp. Group of N.Y., Inc.*, 72 AD3d 677, 678 [2010]). Dillon, J.R, Balkin, Belen and Austin, JJ., concur.